

Before the
Federal Communications Commission
Washington, DC 20554

2001 MAR 15 A 11: 59

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Western Heights School District)
Oklahoma City, Oklahoma)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-150495

CC Docket No. 96-45✓

CC Docket No. 97-21

RECEIVED

ORDER

Adopted: March 5, 2001

Released: March 6, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by Western Heights School District (Western Heights), Oklahoma City, Oklahoma, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Western Heights appeals SLD's refusal to use the "feeder pattern method" to determine Western Height's discount percentage under the schools and libraries universal service support mechanism.² Western Heights further asserts that because this issue raises a novel question of policy, it should be considered by the full Commission.³ For the reasons discussed below, we deny the Request for Review and affirm SLD's denial of Western Heights' application.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries and consortia that include eligible schools and libraries may apply for discounts

¹ Request For Review by John D. Harrington, Funds for Learning, on behalf of Western Heights School District, to Federal Communications Commission, filed July 31, 2000 (Request for Review).

² *Id.*

³ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). The Commission's rules provide that requests for review of decisions shall be considered and acted upon by the Common Carrier Bureau, except that requests which raise novel questions of fact, law, or policy shall be considered by the full Commission. 47 C.F.R. § 54.722(a).

for eligible telecommunications services, Internet access, and internal connections.⁴ In accordance with the Commission's rules, the discount available to a particular school or library is determined by indicators of poverty and high relative cost of service.⁵ The level of poverty for schools and school districts is measured by the percentage of their student enrollment that is eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism.⁶ A school's high-cost status is derived from rules that classify it as urban or rural.⁷ The Commission's rules provide a matrix reflecting both the school's urban or rural status and the percentage of its students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.⁸ A school's discount rate is then applied to the cost of eligible services requested by the school.⁹

3. Western Heights is a school district which includes elementary schools as well as middle and high schools.¹⁰ A school district calculates its discount by first calculating the discount applicable to each of its member schools and then calculating the weighted average of these discounts, based on the number of students in each school.¹¹

4. In its application for year-two funding, Western Heights calculated the discount applicable to its elementary schools by an actual head-count of the number of students in those schools that reported that they were eligible for free or reduced price lunches under NSLP.¹² However, to determine the number of such students in its middle and high schools, Western Heights used the "feeder pattern method" rather than an actual head-count.¹³ The "feeder pattern method" estimates the numbers of middle and high school students eligible for NSLP based on the assumption that these schools will have eligibility rates similar to the elementary schools that feed into them.¹⁴ Thus, Western Heights based its reported middle and high school eligibility rates on a student-weighted average of the eligibility rates of its elementary schools.¹⁵ Using this

⁴ 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. §§ 54.502, 54.503.

⁵ 47 C.F.R. § 54.505(b).

⁶ 47 C.F.R. § 54.505(b)(1).

⁷ 47 C.F.R. §§ 54.505(b)(3)(i), (ii).

⁸ 47 C.F.R. § 54.505(c).

⁹ *Id.*

¹⁰ Request for Review at 1-2.

¹¹ 47 C.F.R. § 54.505(b)(4).

¹² Request for Review at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 2-3.

method, Western Heights calculated that its middle and high schools were entitled to the maximum 90% discount, and that the district overall was entitled to an 88% discount.¹⁶

5. On August 10, 1999, SLD issued a Funding Commitment Decision Letter, granting Western Heights' funding requests but assigning an 80% discount rate to the middle school, a 60% rate to the high school and a 78% shared discount to Western Heights as a whole.¹⁷ On August 31, 1999, Western Heights appealed the discounts to the Administrator, submitting documentation that supported Western Heights' calculations and use of the "feeder pattern method."¹⁸ On June 29, 2000, the Administrator denied the appeal, stating that "the shared discount percentage you requested was based on Feeder School method, which is an unacceptable method for E-rate discounts" and that "SLD modified your discount percentage to 78% in accordance with the actual count of students participating in the National School Program."¹⁹ Western Heights then timely filed the instant Request for Review.

6. On review, we find that SLD properly denied Western Heights' request for higher discounts based on the "feeder pattern method." This method is not one of the acceptable methods set out in the Commissions' rules and orders for calculating the discount.²⁰ In the *Universal Service Order*, the Commission held that schools that do not use a count of students eligible for the national school lunch program could use only the federally-approved alternative mechanisms contained in Title I of the Improving America's Schools Act, and that all of these mechanisms, while looking to other indices of poverty such as participation in tuition scholarship programs, still rely on "actual counts of low-income children."²¹ The permissible methods thus do not include the "feeder pattern method," which relies on extrapolation rather than actual counting.²² Indeed, in the *Universal Service Order*, the Commission considered a comment

¹⁶ FCC Form 471, Western Heights School District, filed April 2, 1999.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Co., to Joe Kitchens, Western Heights School District 41, dated August 10, 1999 (Funding Commitment Decision Letter).

¹⁸ Letter of Appeal, from John D. Harrington, Funds for Learning, on behalf of Western Heights School District, to Schools and Libraries Division, filed September 3, 1999.

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Co., to Joseph Kitchens, Western Heights School District, dated June 29, 2000, at 1 (Administrator's Decision on Appeal).

²⁰ *Request For Review by Merced Union High School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-8404, 9605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18803 (Common Carrier Bur. rel. 2000) (*Merced*); *Request for Review by Enterprise City School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-46073, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 6990 (Common Carrier Bur. rel. 1999) (*Enterprise*).

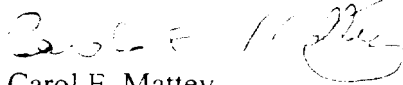
²¹ *Federal-State Joint Board on Universal service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9044-46, 9524-25 (1997) (*Universal Service Order*). *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000).

²² *Enterprise* at para. 6.

specifically suggesting the use of the feeder method to calculate discounts and rejected it.²³ Thus, we find that Western Heights' Request for Review seeking to use this method must be denied. In addition, we reject Western Heights' assertion that this appeal raises a novel issue of policy which must be considered by the full Commission, because as noted above, the Commission has already addressed the issue.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Western Heights School District, Oklahoma City, Oklahoma on July 31, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²³ *Universal Service Order* at 9525 (noting with approval a comment that expanding permissible proxies beyond those that have already been adopted could unnecessarily entangle the FCC in endless review and approval processes of many less appropriate schemes.); *see also Enterprise* at para. 6 (noting that "the Commission specifically rejected commenters' suggestions that would have permitted showings, such as the feeder method, that would merely approximate the percentage of low income children in a particular area.") (citing *Universal Service Order*). Western Heights cites to the "long standing practice" of the Department of Education as permitting the use of the feeder method to determine the number of low-income students in a school and urges us to defer to the Department of Education's expertise in this area. Request for Review at 2. However, as indicated, the Commission has already considered such proxy methodologies and rejected them.